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Paper No. 8

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AUG 19 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Keizou Ochi
Application No. 09/645,375
Filed: August 24, 2000
For: **INFORMATION DISPLAY DEVICE**

DECISION
ON PETITION

This is a response to the Petition to Withdraw Holding of Abandonment, filed May 19, 2003 (supplemented on December 15, 2003) pursuant to 37 C.F.R. § 1.181. No fee is required. The original petition and supplement were resubmitted on July 23, 2004. This decision is in response to all four submissions.

This application became abandoned for failure to timely submit the issue fee due to the Notice of Allowance mailed December 13, 2002. A Notice of Abandonment was mailed on April 18, 2003.

Petitioner asserts that the Notice of Allowance mailed December 13, 2002 was never received. In support therefore, Petitioner attests that the Office communication (Notice of Allowance) was not received at the correspondence address, and that a search of the contents of the file jacket and docket records reveal no evidence of receipt. Copies of the docket records have also been included to corroborate petitioner's claim.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

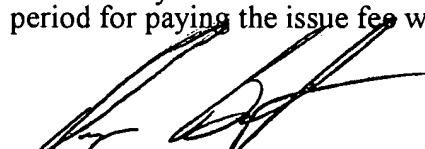
Petitioner has satisfied the requirements set forth above. Accordingly, the petition is **GRANTED**.

The supplement to the original petition merely serves to evidence that there was an irregularity in the mailing of the Notice of Allowance and Issue fee. Apparently, the Originally mailed Notice of Allowance and Issue fee due communication was received back in the Office on November 19, 2003 and re-mailed from Technology Center 2800 on November 20, 2003, without restarting

the time period for payment of the Issue fee. The delay in the delivery of the Office communications is regretted.

The Notice of Abandonment mailed April 18, 2003 is hereby vacated and the holding of Abandonment withdrawn. Also, the Notice of Allowance and Issue Fee Due mailed December 13, 2002 (paper No. 5) is hereby vacated.

Since it has been established that the Notice of Allowance was not received, it is presumed that Applicant also failed to receive the Notice of Allowability and the examiner's reasons for allowance. The application will be forwarded to the Technology Center's technical support staff for mailing of a new Notice of Allowance and Issue Fee Due, as well as a copy of the Notice of Allowability and the examiner's reasons for allowance. The three (3) month non-extendable time period for paying the issue fee will be set to run from the mailing date of the Notices.


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